IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 3919 of 2005(A)

CC.681/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, PATHANAMTHITTA
CRIME NO.429/04 OF ARANMULA POLICE STATION

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PETITIONER:

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1. PHILIPOSE SAKARIAH ALIAS JOMON,
   S/O.SAKARIAH, PUTHUPARAMBIL HOUSE,
   KOZHANCHERI VILLAGE, VANCHIRI DESOM,
   PATHTANAMTHITTA DISTRICT.

2. VARGHESE SAKARIAH ALIAS JOHNSON,
   S/O.SAKARIAH, PUTHUPARAMBIL HOUSE,
   KOZHANCHERI VILLAGE,
   VANCHIRI DESOM, PATHANAMTHITTA DISTRICT.

3. SAJAYAN NAIR ALIAS MONACHAN,
   S/O.BASKARAN NAIR,
   KOTTAYATHU HOUSE (USHA NIVAS),
   KOZHANCHERI VILLAGE, PATHANAMTHITTA DISTRICT.

4. PRADEEP KUMAR ALIAS AMBI,
   S/O.SUKUMARA PILLA,
   VALAYIL HOUSE,
   KOZHANCHERI HOUSE,
   PATHANAMTHITTA DISTRICT.

BY ADV. SRI.SHEEJO CHACKO

RESPONDENTS:

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1. STATE OF KERALA,
   REPRESENTED THROUGH THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

2. SAJI THOMAS,
   VETTOLIPARAMBIL HOUSE,
   VANCHITHRAMURIYIL, P.O.KOZHENCHERRY.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER
SRI.S.SUBHASH CHAND

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/02/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3919 of 2005

Dated this the 15th day of February 2007

O R D E R

The petitioners are accused 1 to 4 in a prosecution initiated on the basis of a final report submitted by the police under Section 427, 294(b) and 506(II) read with 34 I.P.C and Section 4 read with Section 25(i) of the Arms Act. The crux of the allegation raised against the petitioners in such final report is that they, in furtherance of their common intention to intimidate, threaten and cause injuries to the defacto complainant/CW1 at 20.30 hours on 21/11/2004 went to the house of CW1 and indulged in wanton acts of intimidation armed with the dangerous weapon – a sword stick. CW1 and CW3 were allegedly intimidated and stone was allegedly thrown which hit the window glasses and caused damage to the tune of Rs.500/-. Abusive words were also showered at the victims by the petitioners, it is further alleged. Cognizance was taken by the learned Magistrate. The first petitioner filed a complaint alleging that the police have not properly investigated the crime and totally false and vexatious allegations have been raised by

the investigating officer solely to oblige the defacto complainant and the Circle Inspector of Police having jurisdiction who was hand in glove with the said CW1.

2. The Director General of Police had called for a report from the Deputy Superintendent of Police, Crime Detachment, Pathanamthitta and the said officer submitted a report in which he expressed his opinion that the allegations were not correct and a proper investigation has not been conducted. The petitioner has, somehow, come into possession of a copy of the said report and the same has been produced as Annexure-VIII. According to the petitioner, such a report was filed but no action was taken by the superior officials.

3. This court, by order dated 27/11/2006 in an attempt to ascertain the truth of Annexure-VIII, directed the Superintendent of Police, Pathanamthitta to report whether any such report has been received by the Director General of Police. Accordingly, a further statement has been filed by the Superintendent of Police, Pathanamthitta along with a factual report enclosing Annexures 1 and 2.

4. It is now admitted that the Deputy Superintendent of Police, Crime Detachment, Pathanamthirra had submitted a report as contended by the petitioners but it is submitted that the said report was not accepted by the Director General of Police who received it through the Superintendent of Police, Pathanamthitta and the Deputy Inspector General of Police, Thiruvananthapuram Range. It is further submitted that the Director General of Police has got a further enquiry conducted by the Assistant Inspector General and after an oral enquiry conducted by the Assistant Inspector General, the Director General of Police has confirmed that the report of the Deputy Superintendent of Police, Crime Detachment need not be accepted as recommended by the Superintendent of Police as also Deputy Inspector General of Police.

5. The learned counsel for the petitioner submits that in these circumstances, this is an ideally fit case where atleast a further investigation has to be directed in the interests of justice. It is submitted that if such a direction were not issued, the interests of justice would suffer. The prayer in the Criminal Miscellaneous Case is to quash the proceedings.

6. The learned Public Prosecutor and the learned counsel for the second respondent/defacto complainant have also been heard. The learned public Prosecutor only reiterates the contentions raised in the statement filed by the Superintendent of Police, Pathanamthitta. The learned counsel for the second respondent submits that the Director General of Police, after necessary enquiry through superior officers of the police, has come to the conclusion that Annexure-VIII report of the Deputy Superintendent of Police, Crime Detachment need not be accepted and acted upon. In these circumstances, it is not necessary to direct any further investigation, it is urged.

7. Having considered all the relevant inputs, I am satisfied that the interests of justice will be best served by directing a further investigation to be conducted by the Superintendent of Police, CBCID, Pathanamthitta. In the light of the various circumstances that have been revealed in this case, I am of the opinion that such a course alone shall ensure the interests of justice.

8. In the result:

i) This Criminal Miscellaneous Case is allowed in part.

ii) The Director General of Police is directed to ensure that further investigation is conducted under Section 173(8) by the Superintendent of Police, CBCID, Pathanamthitta and a further report is submitted to the learned Magistrate, in accordance with law.

iii) The necessary orders shall be issued by the Director General of Police, within a period of one month. The learned Public Prosecutor shall convey the directions to the learned Director General of Police. Compliance shall be reported to this court by 20/03/2007.

(R.BASANT, JUDGE)

jsr

The grievance of the petitioners is that they have been falsely implicated in a prosecution interalia under Section 506(ii) I.P.C and Section 4 and 25(i) of the Arms Act. It is their contention that the Director General of Police had got an enquiry conducted into the conduct of the investigating officer and a report has been submitted to the Director General of Police about the improper and illegal investigation conducted by the investigating officer into this case.

2. Has the DGP received any such report? If any such report has been received, has the DGP accepted the same? If the same has been accepted, what further steps have been taken by the DGP? Has any further investigation been ordered or is intended to be ordered in

the facts and circumstances of this case? I am of the opinion that the learned Public Prosecutor must take specific instructions on these aspects and get a statement filed by the Superintendent of Police, Pathanamthitta in the matter. Such report shall be filed within a period of one month from this date. Call this petition again for hearing on 02/01/2007. The learned public prosecutor shall ensure that such statement is filed before 02/01/2007.

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006